

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of SERRENIA O. WHITE and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION NATIONAL CEMETERY, Beverly, NJ

*Docket No. 01-1299; Submitted on the Record;
Issued April 15, 2002*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation benefits effective April 23, 2000.

The Office accepted appellant's claim for sprain of the right foot, exacerbation of the right calcaneal spur and chronic plantar fasciitis. She has not worked since April 24, 1995 and received disability benefits.

In a report dated September 6, 1996, Dr. Alfred J. Iezzi, a podiatrist, considered appellant's history of injury, performed a physical examination and reviewed x-rays, the June 1995 magnetic resonance imaging (MRI) scan and the electromyogram (EMG). He diagnosed that appellant had traumatic plantar fasciitis, heel spur syndrome, traumatic tenosynovitis and tarsal tunnel syndrome in her right foot. Dr. Iezzi did not recommend surgery.

In a disability note dated January 31, 1996, Dr. John M. Naame, a Board-certified orthopedic surgeon, opined that appellant could return to work on February 1, 1996.

Appellant was referred to Dr. Glenn Zuck, an osteopath, for a second opinion. In a report dated April 15, 1996, he considered her history of injury, performed a physical examination and reviewed an MRI scan dated June 22, 1995, x-rays and an EMG. He diagnosed chronic plantar fasciitis, tarsal tunnel syndrome and posterior tibial tendinitis of the right foot. Dr. Zuck opined that there was "a high probability" that appellant's symptoms were related to the April 24, 1995 employment injury. He stated that there did not appear to be any preexisting conditions that directly effected the injury and there were no preexisting conditions making the present condition worse.

In a report dated June 7, 1996, Dr. Zuck performed a physical examination and diagnosed chronic plantar fasciitis, resolving tarsal tunnel syndrome and posterior tibial tendinitis on the right foot. He prescribed an arthroscopic plantar fascial release for the right hindfoot. Dr. Zuck

referred appellant to Dr. Iezzi for a surgical evaluation. He stated that she was “presently disabled and out of work.”

In a report dated August 20, 1998, another second opinion physician, Dr. Norman M. Heyman, a Board-certified orthopedic surgeon, considered appellant’s history of injury, performed a physical examination and diagnosed plantar fasciitis with a tight heel cord. He stated that appellant’s current difficulties were not related to the April 24, 1995 employment injury but were related to a tight heel cord. Dr. Heyman did not believe surgery would improve her condition.

In a follow-up report dated November 20, 1998, pursuant to a request for clarification from the Office, Dr. Heyman diagnosed heel cord tightness at the right ankle and contraction and heel spur syndrome. He stated:

“The tight heel cord was probably existent at the time of the injury and because of its anatomical attachment to the plantar fascia and to the posterior aspect of the heel, it promotes and maintains the injury. Therefore, this tight heel cord or tight gastrocnemius muscle must be released and must be stretched on a regular basis.

“It could also be that the heel cord tightness is a mechanism of perfection and manifestation of the injury. It is difficult to say, but is part and parcel of the Achilles tendinitis and of the heel spur syndrome and of this lady’s difficulty in her right ankle.”

In another follow-up report dated February 19, 1999, Dr. Heyman clarified his November 20, 1998 report by stating that it was “not possible to determine which came first, the plantar fasciitis or the tight heel cord, but experience has indicated that with fragile stretching of the heel cord, in a great many patients, the plantar fasciitis is relieved and surgery not needed.” He stated that his diagnosis was plantar fasciitis and appellant had persistent tight heel cord despite the fact that it had been released. Dr. Heyman concluded that plantar fasciitis was “the accident-related diagnosis and the tight heel cord comes along with it so that the diagnosis remains plantar fasciitis with a tight heel cord.”

Appellant was referred to Dr. Marc L. Kahn, a Board-certified internist, for another second opinion. In his report dated May 3, 1999, Dr. Kahn considered appellant’s history of injury, performed a physical examination and reviewed x-rays, an EMG and an MRI scan. He diagnosed that appellant’s status was post work-related fall with contusion of the right foot. Dr. Kahn found that appellant was not disabled due to her April 24, 1995 employment injury.¹ He stated that appellant had subjective complaints with no objective findings. Dr. Kahn stated that the heel spur was a preexisting condition as was the plantar fasciitis and her tarsal tunnel syndrome. He stated that at most appellant suffered a contusion, which had resolved. “She is able to work full duty.”

In a notice of proposed termination dated March 9, 2000, the Office found that Dr. Kahn’s opinion that appellant had no work-related disability from the April 24, 1995

¹ Dr. Kahn erroneously stated April 29, 1995.

employment injury constituted the weight of the evidence and, therefore, proposed to terminate appellant's benefits.

By decision dated April 17, 2000, the Office finalized the termination, effective April 23, 2000.

By letter dated April 24, 2000, appellant requested an oral hearing before an Office hearing representative, which was held on October 23, 2000. At the hearing, appellant described her work injury and her current complaints of pain in her heel when she put her right foot down. Appellant stated that it hurt to walk on her foot. She stated that she did not have any problems with her right foot or right ankle or anything of that nature prior to the April 24, 1995 employment injury. Appellant stated that she had surgery on her foot on March 26, 1999 when she had a bunion and corn on her toes removed. She said that she went back to the hospital on March 28, 1999 due to an infection in her foot. Appellant testified that when she saw Dr. Kahn, her right foot was still bandaged and that he only talked to her for about two minutes.

By decision dated January 9, 2001, the Office hearing representative affirmed the April 17, 2000 decision.

The Board finds that the Office erred in terminating appellant's compensation benefits effective April 23, 2000.

Once the Office has accepted a claim, it has the burden of justifying termination or modification of compensation benefits. After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² The Office's burden of proof includes the necessity of furnishing rationalized medical evidence based on a proper factual and medical background.³

In this case, Dr. Kahn's March 9, 2000 report is based on inaccurate information. He stated that appellant had the preexisting conditions of tarsal tunnel syndrome and plantar fasciitis. In its statement of accepted facts, however, the Office stated that appellant had a preexisting condition of tarsal tunnel syndrome. The Office in fact accepted appellant's condition for plantar fasciitis and exacerbation of the calcaneal spur. The Board has held that a medical report based on an inaccurate factual and medical history is not probative.⁴ Dr. Kahn's opinion, therefore, which does not contain an accurate medical history of appellant's condition and is, therefore, not well rationalized does not justify the Office's termination of benefits. Since the record does not contain a well-rationalized medical opinion establishing that appellant no longer suffers from residuals of the April 24, 1995 employment injury, the Office has failed to justify its termination of benefits.

² *Wallace B. Page*, 46 ECAB 227, 229-30 (1994); *Jason C. Armstrong*, 40 ECAB 907, 916 (1989).

³ *Larry Warner*, 43 ECAB 1027, 1032 (1992); *see Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁴ *See Gary R. Sieber*, 46 ECAB 215, 224 (1994); *Geraldine H. Johnson*, 44 ECAB 745, 749 (1993).

The January 9, 2001 and April 17, 2000 decisions of the Office of Workers' Compensation Programs are hereby reversed.

Dated, Washington, DC
April 15, 2002

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member